

Fire Island Inlet to Moriches Inlet (FIMI) Stabilization Project

Real Estate Fact Sheet

NYS Department of Environmental Conservation and Suffolk County

WHAT IS THE FIMI PROJECT?

- The Fire Island Inlet to Moriches Inlet (FIMI) Stabilization Project is designed to provide coastal storm risk reduction from coastal erosion and tidal inundation as a one-time, stand-alone project. It does not limit the options available for the larger Fire Island Inlet to Montauk Point (FIMP) project, nor pre-suppose the outcome of the FIMP Reformulation Study. FIMI and FIMP were funded by Congress after Hurricane Sandy.
- The Project will be constructed by the US Army Corps of Engineers (USACE) in partnership with their two Non-Federal Sponsors, the New York State Department of Environmental Conservation (DEC) and Suffolk County (County). FIMI will reestablish protective dunes and beach berms along the Atlantic Coast of Fire Island, from Robert Moses State Park in the west to Moriches Inlet in the east, with exceptions in certain protected federal wilderness areas.
- For more detail on the specific areas where dunes and berms are to be built, maps of the Project areas, as well as all Project documents, are available on the USACE website at:
[Fire Island to Montauk Point Reformulation Study](#)

WHAT IS AN ENGINEERED BEACH AND DUNE SYSTEM?

An engineered beach and dune system provides coastal protection based on engineering calculations following extensive study by USACE. These calculations establish the appropriate width and slope of beaches and the size and location of dunes (where necessary) to protect New York's shoreline. Engineered beach and dune systems are designed to provide protection from flood and wave damage caused by storms.

WHY DOES USACE NEED TO ACCESS TO MY PROPERTY?

It is the responsibility of the County to obtain access to all the real estate that USACE requires to construct the Project. In order to construct the dune and beach profile, various pre-construction and construction activities have to take place on approximately 500 private ocean-front parcels along the length of the Project. These activities require USACE, DEC, and the County to have appropriate access on the parcels.

HOW WERE THE REQUIRED ACCESS AREAS DETERMINED?

After extensive engineering studies, cost benefit analyses and consultation with numerous regulatory agencies to assure the desired level of protection, a beach and dune template (location, height and width of sand placement) has been developed and approved for the FIMI Project. Because the beach and dunes must be built to this specific design template, sand must be placed on most private ocean-front properties. Please refer to the USACE link above and look at Appendix G, Exhibits A and C to determine what type of access is required on your parcel. Surveyors and other consultants retained by the County will need access to the ocean-front parcels in order to precisely identify and map the Project's footprint and to conduct environmental assessments, if needed.

1. **Process:** Permission must be granted by the property owner to the County to allow access for surveying each parcel. In order for the Project's footprint on each specific property to be precisely identified and mapped, each landowner will be asked to execute a Right of Entry.
2. **Right of Entry for Survey and Exploration (ROE):** A Right of Entry is the authority given by a property owner to another party, in this case, the County, to allow access upon the owner's property for a specified time period. This ROE will allow the County to contract with licensed and qualified surveyors and consultants to complete the necessary mapping and site investigations. Once these surveys are completed, it can be determined to what extent the Project will encroach upon an owner's property.

NOTE: Final determination of whether an easement, relocation or acquisition is required on a given parcel cannot be determined until the surveys are completed.

WHAT ARE THE EASEMENTS NEEDED FOR USACE TO CONSTRUCT AND MAINTAIN THE PROJECT?

1. **Process:** The beach and dune template extends onto most privately owned ocean-front parcels along Fire Island. A property owner will need to give permission to the County for USACE to place sand on their private property by signing an easement. During the construction phase of the Project, the contractor may need to enter and/or cross over private land with equipment, material and labor for the purpose of building the beach and dunes. Adequate access to all relevant work areas is essential and must be secured for successful construction of the Project.
2. **Temporary Construction Access:** Temporary Construction Access is similar to a ROE, allowing the Project contractor to bring construction equipment, material and labor onto or across private property, but solely for the duration of the construction phase of the Project. The format for temporary access agreements is still being developed as are the locations on which temporary access will be needed. These locations will be determined as the construction documents are being finalized next spring. When the temporary access agreement is available, it will be posted on the County website at www.suffolkcountyny.gov/fimi as well as mailed to affected property owners.

Please Note: Temporary construction access may needed on a large number of parcels.

3. **Perpetual Beach Easement:** Perpetual Beach Easements are not required for parcels that will be acquired. A Perpetual Beach Easement ("Easement") grants a legal right to use a limited and clearly defined part of a privately owned property to build this Project. The Easement is termed 'perpetual' because as long as the Project remains authorized by Congress, the Non-Federal Sponsors must maintain the ability to access the Project area to perform inspections and maintenance in order to ensure the continued benefit from the Project (see below for other key provisions of the Perpetual Beach Easement). Property owners with mortgages will be required to work with their banks to subordinate their loans to the Easement. There are two types of Perpetual Beach Easements: 1) where the easement area is free of all structures and 2) where the easement area contains a pre-existing structure(s) which are located wholly north of the landward crest of the dune, but within 25 feet north of the landward toe of the dune.

Note about mortgages: A Subordination of Mortgage will be required for all Easement properties which have an existing mortgage. The property owner's lender will be required to sign a simple agreement, provided by the County Attorney's Office, allowing the mortgage to be subordinate to the Easement. This is necessary to ensure that the Easement will stay in effect in the event of foreclosure. When contract terms are met and title has been cleared, a deed or easement will be recorded at the Office of the County Clerk, and the landowners will be paid any agreed upon compensation.

4. **Waiver:** The execution of all required Perpetual Beach Easements will be critical to allow this Project to proceed expeditiously. Federal Regulations provide that every property owner has the right to an appraisal for possible compensation in exchange for the granting of the Perpetual Beach Easement. The Waiver document offers the owner an opportunity to waive the right for an appraisal and to donate the Easement to the County.

WHAT ARE THE KEY PROVISIONS OF THE PERPETUAL EASEMENT?

- The Easement will specifically describe the portion of the property where an engineered beach and dune system will be placed, i.e. the Easement Area.
- The property owner retains title to the entire parcel, however, this specifically identified and described portion will be subject to the conditions of the Easement.
- The Easement is only for the placement of sand, dunes, vegetation and fencing on private property and specifically states that it will allow the County, DEC, USACE and their representatives, agents contractors and assigns "to construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically."
- The Easement will not give the County the right to erect any structures in the Easement Area (except dune fencing or overwalks).
- No grading, excavating or placement of any structure or material will be allowed in the Easement Area by the property owner, except for dune overwalks.
- Pre-existing structures that are located wholly north of the landward crest of the dune may remain in the Easement Area.
- Since USACE projects are specifically authorized for construction by Congress, the Easement will remain in full force and effect while the Project remains authorized by Congress. Should Congress ever de-authorize the Project, landowners may request the release of the Perpetual Beach Easement on their property.
- While Federal regulations require that the public be able to have access to all portions of beaches on which federal money is spent for a beach construction project, the Easement Area still remains private property and the public has no rights to use any portion of the property beyond the Easement Area.
- The public will have access to the beach area within the Easement Area and south of the Easement Area.
- An owner of property does not assume additional liability by granting an easement to another person or entity. Any contractor entering the property during the Project will have insurance to cover any damages to the property or for any injuries resulting from the work.

CAN STRUCTURES BE RELOCATED?

In some cases, private ocean-front properties may have pre-existing structures that compromise the proposed dune template. The options available to property owners in this situation will depend upon the degree and location of the structure's impact, the configuration of the lot, and the availability of alternative 'off-lot' locations.

1. **Process**: Once the surveys are completed, all parcels with structures that encroach south of the northern landward crest of the new dune template will be identified. These structures must be relocated, modified or removed. In all these instances, an appraisal will be necessary.
2. **Structure Relocation**: If a portion of a pre-existing structure, such as a deck or a pool, or an entire pre-existing structure, is found to compromise the dune template and there is room on the existing lot to relocate the structure, it will be relocated on the existing lot. If the entire structure cannot be relocated on the existing lot and space is available on another lot within the community, and the structure owner has obtained the other lot on their own, the structure may be relocated to the other lot. Relocations, either on the existing lot or another available lot, will be done by the USACE contractor prior to sand placement.
3. **Structure Modification/Removal**: If a portion of a pre-existing structure, such as a deck or a pool, or an entire pre-existing structure, is found to compromise the dune template and there is no room on the existing lot to relocate the structure, it may be modified or removed to accommodate the dune template. Modifications and removals will be done by the USACE contractor prior to sand placement.

WHEN WILL IT BE NECESSARY FOR STRUCTURES TO BE ACQUIRED BY THE COUNTY?

Wherever the beach and dune profile requires sand to be placed on private property and: 1) it has been determined via survey that the location of pre-existing structures will compromise the integrity of the dune template and 2) relocation or modification of the structure is not feasible, then acquisition of the property and removal of the structure will be necessary to allow construction of the Project within that area.

1. **Process**: The property will be acquired by the County in order to enable USACE to permanently remove the structure from the beach and dune template area.
2. **Appraisal**: The signed ROE will allow for an appraisal of the property. Appraisers will be hired by the County that are certified general appraisers and their qualifications will be pre-approved by USACE. Appraisals will be prepared to federal appraisal standards and subject to review and acceptance by USACE. The appraisals must be prepared in accordance with "Uniform Appraisal Standards for Federal Land Acquisitions" and "Uniform Standards for Professional Appraisal Practice" (USPAP). The appraisal will determine the current fair market value for acquisition. Property owners will be invited to accompany the appraisers during their property inspections.
3. **Offer Letter**: The fair market value of a property will be determined by the appraisal. Once the appraisal is complete, the County will mail an Offer Letter to the property owner offering the appraisal value for the property.
4. **Contract of Sale (Voluntary)**: If the value of the appraisal is agreed to by the County and the Owner, the County will complete an examination of title and prepare a Contract of Sale, Donation Agreement, or other appropriate agreement. The County will work with the property owner to address any title issues and will prepare all closing documents. When contract terms are met and

title has been cleared, a deed will be recorded at the Office of the County Clerk, and the landowners will be paid any agreed upon compensation.

5. **Failure to Agree on Value:** The County will make every effort to acquire real property by mutual agreement to value. If agreement cannot be reached, the County is required to begin judicial proceedings to acquire the property by eminent domain, in accordance with the New York State Eminent Domain Procedure Law. A map and legal description will be filed at the Office of the County Clerk and title will vest in the County upon recording. If suit is brought, just compensation will be determined in New York State Supreme Court. Final settlement could take several years. If suit is not brought, a deed will be recorded at the Office of the County Clerk, and the landowners will be paid the appraised value.

WHAT IS THE SCHEDULE FOR EASEMENTS, ACQUISITIONS AND CONSTRUCTION?

1. **Securing ROEs:** The County is beginning the ROE process immediately in order to have the requisite permissions in hand to allow the Survey and Appraisal teams to begin their work. It is requested that two original signed and notarized copies of the ROE be returned to the County, at the address at the end of the Fact Sheet, by **October 1, 2014**. One executed copy will then be returned to the property owner.
2. **Surveys:** Surveys are expected to be completed over the 2014-2015 Winter season.
3. **Title Search:** A title search will be undertaken by the County during the survey process and completed prior to recording of the easement, deed or vested title.
4. **Easements:** The two draft Perpetual Beach Easement documents are included with this package to allow ocean-front property owners time to review and understand the details of the documents in advance of their required execution. Final documents for execution will be distributed to each property owner after surveys have been completed and the exact descriptions of the required Easement Area have been included in their specific Easement document. Once executed, the Easements will be recorded in the County Clerk's Office as part of the property record. These are expected to be fully prepared and distributed by spring of 2015.
5. **Waivers:** A prepared Waiver will be sent to the property owner at the same time as the prepared Perpetual Beach Easement document. At that time, they will have the opportunity to execute the Waiver and thereby donate their Easement to the County. If you choose to do so, please return two signed originals to the County. Waivers only apply to parcels with easements.
6. **Appraisals:** For Easement parcels, appraisals will be conducted if a Waiver was not signed once the surveys are complete. All other parcels (acquisition and relocation) will require an appraisal to be done once the surveys are complete.
7. **Relocations and Acquisitions:** Appraisals to determine fair market value must be conducted for all properties that contain relocation of a structure and for all properties that will be acquired. If a mutually agreed upon value can be reached after the appraisal process, transfer of title should be relatively straight-forward and quick. If agreement cannot be reached, the County is required to begin judicial proceedings to acquire the property by eminent domain, in accordance with New York State Eminent Domain Procedure Law. A map and legal description will be filed at the Office of the County Clerk and title will vest in the County upon recording. If suit is brought, just

compensation will be determined in the New York State Supreme Court. Final settlement could take several years.

8. **Payment:** For those parcels with accepted offers, payment will be made after recording of the Easement or deed. For parcels where offers have not been accepted, payment will be made when vested title is recorded, or if a claim is filed, when the matter is settled in court.

9. **Construction Start:** Construction is scheduled to begin in the fall and winter of 2014/15 at Smith Point County Park and Robert Moses State Park, respectively. These locations will be constructed first because they involve no private real estate parcels. Construction will then proceed to the community portion of Fire Island when the required real estate (easements, relocations and acquisitions) within a particular geographic area has been obtained by the County. A major factor in scheduling is that endangered species regulations will likely preclude the on-going implementation of the Project from early April through the first of September each year. For most, if not all of the communities, construction is scheduled to commence during the 2015/16 fall and winter season.

WHERE CAN I GET MORE INFORMATION?

The County has set up a webpage for this Project which can be found at www.suffolkcountyny.gov/fimi. Documents referenced above can be found there as well as links to other information. The website will be updated as needed throughout the Project.

WHO CAN WE CONTACT IF WE HAVE MORE QUESTIONS?

1. Your first point of contact should be your local Village or Community Association Leaders.
2. Suffolk County: Gil Anderson, P.E., Commissioner, Department of Public Works
gilbert.anderson@suffolkcountyny.gov
3. New York State: Sue McCormick, P.E. Chief, Coastal Erosion Management Program, NYSDEC,
susan.mccormick@dec.ny.gov
4. USACE Project Manager: Frank Verga, frank.verga@usace.army.mil
5. USACE Real Estate Point of Contact: Robert A. Vohden, robert.a.vohden@usace.army.mil
6. Legal Matters: Dennis M. Brown, Esq., Suffolk County Attorney, county.attorney@suffolkcountyny.gov

Please return two (2) signed (and notarized, if indicated) originals of all documents to Janet Longo, Acquisition Supervisor, Suffolk County Division of Real Property Management and Acquisition, P.O. Box 6100, 100 Veterans Memorial Highway, Hauppauge, NY 11788. ROE forms are due October 1, 2014.